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THE CITY OF NEW YORK
LAW DEPARTMENT

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July 26, 2021

VIA ECF

Hon. John G. Koeltl
United States District Court
Southern District of New York
40 Centre Street
New York, New York 10007

*Conference adjourned to August 6, 2021
at 11:00 A.M. Parties can discuss all
open issues at that conference. Case stayed
pending the results of the conference.
So ordered.
JG/Koeltl
7/26/21
U.S.D.C.*

Re: *McConnell Dorce v. City of New York, et al.*, 1:19-cv-02216 (DAB)

Dear Judge Koeltl:

We represent defendants City of New York and Maria Torres-Springer (collectively "City") in the above action. For the reasons set forth below, the City requests that the Court render a determination of the remaining portions of its motion to dismiss.

As a result of the recent decision of the Second Circuit Court of Appeals reversing in part the order of this Court dismissing the action, the matter was remanded to your Honor for determination consistent with the appellate decision. Both the decision of this Court and the appellate decision addressed only the jurisdictional grounds for the motions to dismiss, that is, those pursuant to FRCP 12(b)(1). However, both the City's motion to dismiss, as well as that of co-defendants, were made on substantive grounds as well, pursuant to FRCP 12(b)(6) (*see* Docket Nos. 31-33 and 51-52).

Your Honor's decision expressly reserved the arguments in the motions concerning the merits of the claims. Specifically, the decision states, "Because the Court does not have jurisdiction to hear the claims, it is unnecessary to address the defendants' motion to dismiss the claims under Rule 12(b)(6)." (*See* Docket No. 64 at p. 32.)¹

Accordingly, the City now respectfully requests that before any other proceedings be had in the matter, this Court, having jurisdiction of the claims as determined by the Second Circuit, decide the portion of the motions to dismiss made on the grounds that the claims are substantively without merit.

¹ Although the motions were technically closed by this Court's decision (*see* Docket No. 64), the FRCP 12(b)(6) grounds for dismissal were not determined by this Court.

In addition, we note that an Order was made on January 10, 2020 by Judge Deborah Batts staying discovery until after the disposition of the motions to dismiss (*see* Docket No. 63). Inasmuch as the motions previously made are not fully decided, it would seem that discovery remains stayed.

Finally, plaintiffs' counsel contacted defendants' counsel last week requesting that all parties agree to a one-week adjournment of the conference scheduled for July 30 due to a scheduling conflict. All defendants' counsel consented to the adjournment. However, in light of the pending motions and consequent stay of discovery, the City requests that the conference be postponed until the motions are decided.

Thank you for your consideration of these matters.

Respectfully,

/s/ Andrea B. Feller

Andrea B. Feller
Senior Counsel